

DIVERSION OF TRAFFIC OFFENDERS. By J.K. CANAGARAYAR. [Malayan Law Journal. 1981. xi+229 pp.]

The premise on which this book is based is that the traditional criminal process and the sanctions it provides is an inappropriate mode of human and social control in all situations of traffic rule violations. The current dispositional pattern of the traffic offender is seen as "assembly line justice" or as "putting square judicial pegs into round behavioural holes" because it does not identify and remedy the possible causes of traffic offences present in the offender himself. One need only note the ever increasing number of violent road accidents to appreciate that the invocation of the criminal process to control traffic violations has failed dismally.

Dr. Canagarayar addresses himself to this problem under the rubric of 'Diversion'. He contends that diversion affords the traffic offender "an opportunity to utilize the benefits of mechanisms geared to resolve his problems, amidst efforts to avoid a full-blown criminal trial, so as to spare the courts the need to impose ineffective and redundant sentences."

The book comprises three chapters. The first surveys the existing diversionary measures in North America. Of particular interest to the local reader is a discussion of studies on the deterrent effect of ticketing and the demerit point system diversionary approach practised in Singapore. The second chapter is devoted to evaluating the various principles on which diversion of traffic offenders is based. Suggestions are made as to the principles that should govern decisions to divert at the various stages of the criminal process. In the last chapter, the author proposes a strategy for diversion which appears not only to be legally sound but also one which provides a solid framework for practical decision-making.

The following recommendations stand out among the many referred to in this work. On police diversion, a process is introduced whereby a record slip is attached to the licence card of every driver. This slip may be used as a recording device to indicate previous violations or accidents. Broad guidelines are then given to assist the police officer in deciding whether to divert the offender. On ticketing as a diversionary measure, the suggestion is made that the offender who receives a ticket be channelled to an administrative agency that could check on his record and interview him, if necessary, so as to examine his driving deficiencies. Such an agency, staffed by experts in the field, would fulfil a useful role in identifying the offender's problems and referring him to various resources that may not be known to the police, offender or the public. It could also act as a source agency for pre-sentence reports. Referring next to the court as a diversionary mechanism, the author recommends a two-tier "fault" system. The court should take into consideration the "active" as well as the "passive" factors that contributed to the traffic violation. "Active" factors are defined as those factors that are objectively identifiable in accordance with the rules of criminal procedure and evidence as being actively associated with the incident; for example, environmental, highway, traffic and vehicle conditions. "Passive" factors are those factors which are more indirectly associated with the incident and having a bearing to the subjective and personality characteristics of the offender;

for example, overall attitudes, psychological disturbances, physiological handicaps and past driving record. Such a two-tier fault process has the advantage of focusing not only on the offence (as is presently done) but also on the offender. Perceiving “fault“ in this manner enables the court to directly relate the offender’s liability with the disposition that follows. Guidelines are also outlined for the courts to decide on whether the offender should be diverted. Some of the possible diversionary measures mentioned in the text are attendance centres and training programmes, clinics, incentive and reward oriented programmes, and various techniques of interaction with the community all of which the author sets out in detail.

Dr. Canagarayar acknowledges that his proposed diversion strategy should be seen only as an experiment and not a complete solution to traffic management. However it is an important step to curtail the present process of placing “square judicial pegs in round behavioural holes.“ The experience of the North American countries seeking solutions to this problem certainly warrants serious study in Singapore in view of the carnage that is occurring on our roads today.